

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF IDAHO

IN RE)	
)	
LEONA KASEY SWINFORD,)	Case No. 99-00724
)	
Debtor.)	MEMORANDUM OF
DECISION)	AND ORDER
_____)	

Jake W. Peterson, Boise, Idaho, for Debtor.

Bernie R. Rakozy, Boise, Idaho, Chapter 13 Trustee.

On July 15, 1999, a confirmation hearing was held in this chapter 13 case. The Trustee objected to confirmation of the proposed plan on the related issues of feasibility, § 1325(a)(6), and whether the Debtor had sufficiently regular income with which to fund a plan, §§ 109(e), 101(30). These issues were taken under advisement after hearing the testimony of the Debtor in support of her plan, and the arguments of counsel and the Trustee.

The Court has reviewed this matter and adheres to its comments at the time of hearing to the effect that proceeding under chapter 7 would likely be a better alternative for the Debtor, in light of her present and future circumstances, than committing to a three-year chapter 13 plan which will pay very little to creditors.

In chapter 7, the debtor's discharge would be entered relatively quickly. In chapter 13, it will be entered three years from now and only then if she has faithfully performed her plan during that period. Discharge under chapter 7 would enable the Debtor to begin rebuilding her financial life immediately.

The Court sees no impediment to chapter 7 relief, nor facts that compel proceeding under chapter 13. There are no allegations of claims which would be nondischargeable under chapter 7 and which require chapter 13's greater discharge. Nor is there significant non-exempt property which could be effectively protected only under chapter 13. Nor does the Debtor seek to avail herself of the ability to cure defaults, or other similar benefits available only under chapter 13.

The Debtor could make voluntary payments after a chapter 7 discharge, *see* § 524(f), instead of obligating herself to plan performance. She thus has another method available to fulfill her intentions of honorably dealing with her creditors.

The Debtor's budget covers, barely, only the most absolutely necessary expenses for her and her young child. There are no luxuries. All of the Debtor's limited income could easily be used for reasonable and necessary living expenses. Plan payments, though small, reflect a dedication of funds that could be legitimately used for living expenses. *See*, § 1325(b). While the evidence would indicate Debtor can make the small monthly payments called for under the plan, there is clearly very little room in the Debtor's budget for the unexpected.

The difference between chapter 7 and 13 is probably minimal insofar as their impact on the Debtor's credit and reputation. The fact that she filed for bankruptcy relief and obtained a discharge will likely be very similarly reported. The Debtor will probably receive neither commendation nor any special consideration from future credit providers or from existing creditors treated under the plan due to her decision to proceed under chapter 13 instead of chapter 7.

While the Court appreciates the Debtor's sincere desire to pay what she can to creditors, there is nothing inherent in this plan or in the chapter 13 process that communicates to creditors her laudable intention or tells them of the sacrifices she is and will be making in order to fulfill this intention.

But the fact that the Court, the Trustee, and possibly even the Debtor's own counsel believe that she has a better alternative to this chapter 13 plan is of little consequence if she meets the eligibility standards of the Code for chapter 13 relief, and satisfies the confirmation requirements of § 1325(a). Though in many ways a close issue, I conclude from the entirety of the record that there is no such impediment to the confirmation of the chapter 13 plan now before the Court. Should the Debtor become unable to perform her plan, the Trustee has the right to seek conversion or dismissal. The Debtor also continues to have the right under § 1307(b) to voluntarily convert the case to chapter 7 should the above noted factors, or future events, persuade her of the wisdom of that approach.

Accordingly, the Court will overrule the Trustee's objections and confirm the Debtor's proposed plan. Debtor's counsel shall submit a proposed Confirmation Order, consistent with this District's model order and bearing the Trustee's endorsement.

DATED this 10th day of August, 1999.

TERRY L. MYERS
UNITED STATES BANKRUPTCY JUDGE

